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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 461

JOSHUA C. CARTER,

Appellant,

vs.

GENERAL AMERICAN LIFE INSURANCE COMPANY

APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

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SUPREME COURT OF THE UNITED STATES

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No. 461

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GENERAL AMERICAN LIFE INSURANCE COMPANY

OBJECTIONS TO JURISDICTION AND MOTION TO DISMISS

To the Honorable the Supreme Court:

The appellee objects to the jurisdiction of this Court and moves the Court to dismiss the appeal, for the following reasons:

1. The record shows that appellee raised, by its first brief in the Supreme Court of Indiana, the question of appellant's right to obtain jurisdiction over appellee in Indiana by serving the Commissioner of Insurance as appellee's forced agent under the statute; appellant at no time prior to the writing of the final opinion by the Supreme

Court of Indiana made any contention whatsoever, nor presented to the court, the point that if the court should hold the service statute available only to residents of the state or to enforce contracts made within the state, such holding would violate any provision of the Constitution of the United States. It was not until the Supreme Court of Indiana had written its opinion in the case, holding the service statute not available to a non-resident as against a foreign corporation and on a contract not made in Indiana, that appellant presented, as he did in his petition for rehearing, his contention that the statute as so construed denied him a right guaranteed under the Constitution of the United States. His contention was thus too late.

Rooker v. Fidelity Trust Co., 261 U. S. 114; 67 L. Ed. 556.

Eastern Bldg. & Loan Ass'n v. Welling, et al, 181 U. S. 47; 45 L. Ed. 739.

Tex. & Pac. R. R. Co. v. *So. Pac.*, 137 U. S. 48; 34 L. Ed. 614.

2. The Supreme Court of Indiana never passed upon the question of the validity of the service statute in the light of so-called Constitutional rights or guarantees to a litigant. The petition for rehearing was denied without opinion.

Consolidated Turnpike Co. v. Norfolk & O. V. R. R. Co., 228 U. S. 326; 57 L. Ed. 857.

3. The construction of the Indiana service statute given to it by the Supreme Court of Indiana does not discriminate against a citizen of any state, but puts the distinction wholly on the basis of residence or the enforcement of an Indiana contract. The record does not disclose discrimination

against citizens of another state; hence no Federal right is involved.

Douglas v. N. Y., N. H., & H. R. R. Co., 279 U. S. 377; 73 L. Ed. 747.

Morris & Co. v. Skandinavia Ins. Co., 279 U. S. 405; 73 L. Ed. 762.

See statement concerning *Douglas* case supra, in *Miles v. Illinois Central R. R. Co.*, 315 U. S. 698, l. c. 704, Note 6; 86 L. Ed. 1129, l. c. 1134.

4. The appeal should be dismissed for the further reason that appellant, whose appeal was allowed on August 16, 1944, served the Citation on Appeal, the Praecipe for Transcript, and a Petition for Extension of Time for Filing Record, on August 18, 1944, but withheld service on appellee of his Statement of Jurisdiction, his Petition for Appeal, his Assignment of Errors (Rule 12-2) more than five (5) days after August 16, 1944, and served the same on September 26, 1944, but never served the Order granting the appeal nor included in his service of the Statement of Jurisdiction a direction to appellee of the provisions of Paragraph 3 of Rule 12. No good cause has been shown for disregarding the rule.

5. Since the appellant is seeking to use the statute to bring appellee into the courts of Indiana, and is not attacking its validity, but merely the construction placed upon it by the Indiana Court, his remedy is not by appeal (28 U. S. C. 344 (a)) but by certiorari (28 U. S. C. 344 (b)). Therefore, as the Court will treat his appeal as a petition for certiorari (28 U. S. C. 344 (c)), it should be denied because the record discloses that there is no discrimination against a non-resident on the basis of citizenship. The distinction complained of rests upon residence only. Therefore, neither the statute

nor its construction violates any provision of the Federal Constitution invoked and relied upon by appellant.

LaTourette v. McMaster, 248 U. S. 465; 63 L. Ed. 362.
Canadian Nor. Ry. Co. v. Eggen, 252 U. S. 553; 64 L. Ed. 713.
Ownbey v. Morgan, 256 U. S. 94; 65 L. Ed. 837.

Respectfully submitted,

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